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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,483	02/12/2002	David E. Carlson	81001/101/102	8771

7590

05/07/2003

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EXAMINER

ST CYR, DANIEL

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/075,483

Applicant(s)

CARLSON, DAVID E.

Examiner

Daniel St.Cyr

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11,22-31,33-43 and 47 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9,25-28,33-43 and 47 is/are rejected.
- 7) ☒ Claim(s) 10, 11, 22-24, 29, 30, 31 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. Receipt is acknowledged of the amendment filed 2/3/03.

Claim Objections

2. Claims 31 and 47 are objected to because of the following informalities:

Claim 31 depends on claim 1, but the proper antecedent for claim 31 is claim 30, in line

1, "1" should be changed to 30. the examiner considered claim 31 to dependent on claim 30.

Claim 47, line 1, "47" should be --43--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 7-9, 25-28, are rejected under 35 U.S.C. 102(b) as being anticipated by Lyon, US Patent No. 3,787,993.

Lyon discloses a color coded gas container having bands for identifying the state of the container comprising: the container having a first and a second ends, a first and a second states, and one end of the article has a first perception and a second perception, the first perception indicating the first state and the second perception indicating the second state of the article. (see figure 1 and col. 1, line 45 to col. 2, line 18).

Re claim 2, the first state is unused article and the second state is a used (empty) article. (see figure 1).

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Re claims 3, 25, wherein the first perception is provided by a first identifiable characteristic located on one surface and the second perception is provided by a second identifiable characteristic on another surface (see figures 1, 3).

Re claims 4, 26, wherein the first identifiable characteristic is a first color and the second characteristic is a second color (see figures 3, 4, and col. 2, line 1+).

Re claims 8, 9, wherein the first perception and the second perception are incorporated into the article before use and after use of the article (see figures 3-60).

Re claims 27, 28, the material is plastic. It is capable of changing color and texture.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5, 6, 33-43, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyon. The teachings of Lyon have been discussed above.

Re claims 5, 6, and 43, Lyon does not disclose a plurality of articles. However, having a plurality of articles is a duplication of element, the process of arranging the articles together would have been an obvious step for managing the plurality articles during packaging, storing, and other step process. Therefore, it would have been an obvious extension as taught by Lyon.

Re claims 33-42, Lyon fails to disclose all the details materials characterizing the identification characteristic, such as using a filament, a flag, a plastic flag, etc. However, these

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specific details fall within the engineering design choice, failing to provide any unexpected results. therefore, it would have been an obvious extension as taught by Lyon.

Re claim 47, Lyon fails to disclose the specific step of applying the label onto the article. However, since the structural limitations are as recited, the method step is obtained, and, therefore, obvious.

Allowable Subject Matter

7. Claims 10, 11, 22-31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: Although the prior art of record teaches an article having a first perception indicating a first state a second perception indicating a second state, etc., the prior art of record fails to disclose or fairly suggests that the article is capable of changing from a first perception into a second perception when the article is placed into use. These limitations in conjunction with other limitation in the claims were not shown by the prior art of record.

Response to Arguments

9. Applicant's arguments with respect to claims 1-11, 22-31, and 33-43 have been considered but are moot in view of the new ground(s) of rejection.

Remarks

The amendment filed 2/3/03 on page 9 called to delete claims 43-46, the claims should have been claims 44-46. Claim 43 remains in the application.

Conclusion

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10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel St.Cyr whose telephone number is 703-305-2656. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on 703-305-3503. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7721 for regular communications and 703-308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

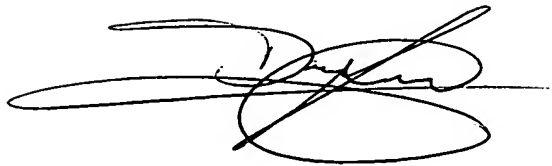
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Daniel St.Cyr
Examiner
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DS
May 2, 2003

A handwritten signature in black ink, appearing to read 'Daniel St. Cyr', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the left.